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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 JOHN REECE,

10 Petitioner,

11 v.

12 MAGGIE MILLER-STOUT,

13 Respondent.
14

CASE NO. C09-5520RJB/JRC

ORDER ADOPTING REPORT
AND RECOMMENDATION AND
DENYING PETITION FOR WRIT
OF HABEAS CORPUS

15 The Court having reviewed the Report and Recommendation of the Hon. J. Richard
16 Creatura, United States Magistrate Judge (Dkt. 18), objections to the Report and
17 Recommendation, if any, and the remaining record, does hereby find and Order:

- 18 (1) The magistrate judge recommended that the court deny the petition for writ of
19 habeas corpus. The court concurs with that recommendation, for the reasons set
20 forth in the Report and Recommendation, and **ADOPTS** the Report and
21 Recommendation (Dkt. 18), with the addition of the following analysis:
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23 (2) The federal constitutional claims petitioner raises in this petition for writ of
24 habeas corpus were not addressed by the state courts in their rulings. In such a
25 circumstance, the Ninth Circuit has set forth the following standard of review for
26 the federal court in habeas corpus cases:

We have relaxed AEDPA's strict standard of review when the state court reaches a decision on the merits but provides no reasoning to support its conclusion. Under such circumstances, we independently review the record to determine whether the state court clearly erred in its application of Supreme Court law. *Delgado v. Lewis*, 223 F.3d 976, 982 (9th Cir. 2000) ("Federal habeas review is not de novo when the state court does not

1 supply reasoning for its decision, but an independent review of the record
2 is required to determine whether the state court clearly erred in its
3 application of controlling federal law.”); *see also, e.g. Greene v. Lambert*,
4 288 F.3d 1081, 1089 (9th Cir. 2002). That is, although we independently
5 review the record, we still defer to the state court’s ultimate conclusion.

6 *Pirtle v. Morgan*, 313 F.3d 1160, 1167 (9th Cir. 2002).

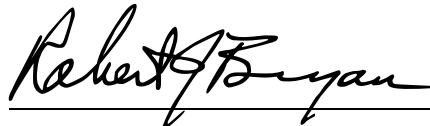
7 In this case, the magistrate judge independently reviewed the record and
8 concluded that, even on *de novo* review of the record, petitioner’s constitutional
9 rights were not violated. This court concludes, based upon an independent review
10 of the record, and application of controlling federal law, that the state court did
11 not clearly err in its application of controlling federal law. Accordingly, the state
12 courts’ denial of petitioner’s personal restraint petition did not result in a decision
13 that was contrary to, or involve an unreasonable application of, clearly established
14 Federal law, as determined by the Supreme Court; nor did the decisions of the
15 state courts result in a decision that was based on an unreasonable determination
16 of the facts in light of the evidence presented in the State court proceedings. *See*
17 28 U.S.C. § 2254(d).

18 (3) The petition for writ of habeas corpus is **DENIED**.

19 (4) The clerk is directed to send copies of this Order to Petitioner, and the Hon. J.

20 Richard Creatura.

21 DATED this 12th day of January, 2010.

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ROBERT J. BRYAN
United States District Judge